HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

Chapter VIII, Rule 32(2) (b)

Description of the case

W. P. No. 266/01 (S/S)
(Old Number 35609 of 2000)

Prempal Singh

Vs.

State of U.P. and others

Approved for reporting.

~~Not approved for reporting~~

Date of decision 13.07.05

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 266 (S/S) OF 2001
(OLD NUMBER 35609 of 2000)

Prempal Singh,
S/o Sri Raghubir Singh,
R/o village Saidpur, Jaskil,
P.S. and Post Asmoli,
District Moradabad.

.....Petitioner

Versus

1. State U.P.
2. Superintendent of Police, Udham Singh Nagar.
3. Deputy Inspector General of Police, Kumaon Range, Nainital. .....Respondents.

Dated: July 13, 2005

Sri C.K. Sharma, leaned counsel for the petitioner.
Learned Standing Counsel.

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for quashing of the order dated 10th September, 1998 and 18th February, 2000 (Annexure 1 and 4 to the Writ Petition).

Briefly stated, the petitioner papered for the recruitment in the Civil Police of State of Uttar Pradesh and after having qualified was selected and recruited on 15th December, 1991 and he was sent for training. After completing training for about 13 months, he was posted as C.P. No. 1101 P.S. Kali Dongi, District Nainital.

The Submission of the petitioner is that he is governed by the U.P. Police Regulations, the Police Act, 1861, ant U.P. Subordinate Police Officers (Punishment and Appeal) Rules 1991.

On 10th September, 1998, the service of the petitioner was terminated with effect from the date of service of the said notice. The termination order was passed under U.P. Temporary Government Service (Termination of Services) Rule 1975.

Aggrieved against the aforesaid order of termination, the petitioner preferred a Writ Petition No. 35671 of 1998 before the Allahabad High Court and the High Court directed for disposed of the appeal.

A departmental appeal was preferred by he petitioner, which was rejected on 9th July, 1999 and against the rejection of the appeal, the petitioner filed a Writ Petition No. 41028 of 1999 before the Allahabad High Court. The Allahabad High Court quashed the appellate order on 27th September, 1999 and has allowed the Writ Petition on the following grounds that:

"Without going into the merit about the status of the petitioner and whether he is temporary or the was appointed on probation are and by the lapse of time or otherwise has become a permanent employee of he department I am of the opinion that the impugned order dated 9th July, 1999 cannot be sustained in as much as petitioner ought to have been afforded an opportunity of hearing and defend himself particularly when termination was on the ground of unsatisfactory co8nduct which has I cost an stigma an consequently, the said impugned order dated 9th July, 1999 (annexure II) id being quashed. Respondent No. 11 Deputy Inspector General of Police, Kumaon Region, Nainital is directed to decide the appeal afresh. The said authority shall inally decide the issue-whether the petitioner is a temporary employee or has become permanent/regular employee. Thereafter appellate authority may determine the applicability of the relevant rules as per nature of employment of the petitioner and determine

whether the petitioner could be terminated without holding enquiry."

The appellate court again dismissed the appeal vide order dated 18th February, 2000 without complying the observations of the High Court.

As will appear from the order of the High Court, the High Court directed that since the termination was on the ground of unsatisfactory conduct and therefore, without giving any opportunity to the petitioner the said order should not have been passed after a prolog service of the petitioner.

Learned counsel for the petitioner has referred Rule 541 as well as Rule 22 of Police Regulations, U.P. Police Service Rules, 1942, which provide that every candidate on appointment to the service in or against a substantive vacancy shall be placed on probation for two years. Relevant Rule 541 as well as Rule 22 are quoted below:-

"541. (1) A recruit will be no probation for the date he begins to officiate in a clear vacancy. The period of probation will be two years except in the following cases:

(a) these recruited directly in the Criminal Investigation Department or District Intelligence Staff will be on probation for three years, and

(b) those transferred to the Mounted Police will be governed by the directions in paragraph 84 of the police Regulations.

If at the end of the period of probation conduct and work have been satisfactory and the recruit has been approved by the Deputy Inspector General of Police for service in the force, the Superintendent of Police will confirm him in his appointment.

(2) In any case in which either during or at the end of the period of probation, the Superintendent of Police is of opinion that a recruit is unlikely to make a good police officer he may dispense with his service. Before, however this id done the recruit must be supplied with specific complaints and grounds on which it is proposed to discharge him and then he should be called upon to show case as to why he should not be discharged. The recruit must furnish his representation in writing and it will be duty considered by the Superintendent of Police before passing the order of discharge.

(3) Every order passed by a Superintendent under sub-paragraph (2) above shall, subject to the control of the Deputy Inspector General be final.

22. Period of probation-[(1) Every candidate on appointment to the Service in or against a substantive vacancy shall be placed on probation for two yeas.

(2) Continuous service rendered in an officiating or temporary capacity in a post included in the cadre of the Service or on an equivalent post may be taken into account in computing the period of probation.

(3) (a) Every officer recruited under the provisions of urle5(i) shall, during his probationary period, be required to attend a course of instruction in the State Police Training College, extending to eighteen months, and to pass the departmental examinations in the subject prescribed for him. On completion of his course he shall be posted to a district and required to obtain a certificate of efficiency in practical tainting as prescribed for Assistant Superintendents of Police.

(b) Every officer, recruited under the provisions of Rule 5(ii) shall during his probationary period, be posted to a

district or to the Criminal Investigation Department or to the Government Railway police."

(4) Every officer recruited under the provisions of rule 5(ii) shall be posted on probation for a period of one year to a district or to the Criminal Investigation Department or to the Government Railway Police].

In **Om Prakash Maurya V.U.P. Co-operative Sugar Factories Federation, Lucknow and others, 1986 AIRSC Page** 1844, it has been held as under:-

"……..An employee appointed against a regular vacancy cannot be placed on probation for a period more than two years and if during the period of probation the appointing authority is of the opinion that the employee has not made use of opportunity afforded to him he may discharge him from service or revert him to his substantive post but he has no power to extend the period of probation beyond the period of two years. Regulation 18 stipulates confirmation of an employee by an express order on the completion of the probationary period. The regulations do nto expressly lay down as to what would be the status of an employee on the expiry of maximum period of probation where no order of confirmation id issued and the employee is allowed to continue in service. Since Regulation 17 does not permit continuation of an employee on probation for a period more than two years the necessary result would follow that after the expiry of two years probationary period, the employee stands confirmed by implication. This is implicit in the scheme of Regulation 17 and 18. In State of Punjab v. Dharam Singh, (1968) 3 SCR 1: (AIR 1968 SC 1210: 1968 Lab 1409) a Constitution Bench of this Court held:

"Where, as in the present case, the service rules fix a certain of time beyond which the probationary period cannot be extended and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an express order or confirmation, he cannot be deemed to continue in that post as a probationer by implication. The reason is that such an implication is negatived by the service rule forbidding extension of the probationary period beyond the maximum period fixed by It. In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication."

In ***Rakesh Kumar Vs. Senior Superintendent of Police Saharanpur and other, 1999(1) A.W.C. 313***, similar Rule 541 has been considered, where after relying upon the decision of the Apex Court in ***Municipal Corporation, Raipur v. Ashok Kumar Misra (1991) 3 SCC 325; State of Punjab V. Dharam Singh, AIR 1968 SC 1210; Om Prakash Maurya V.U.P. Co-operative Sugar Factories Federation, Lucknow and others, 1986 AIRSC Page 1844; M.K. Agarwal V. Gurgaon Gramin "Bank and others, AIR 1988 SC 286; State of Gujarat v. Akhilesh Chand Bhargava, 1987 (4) SCC 482***, it has been held that after the expiry of the period of probation, the petitioner was confirmed and therefore, he cannot be subject to the said U.P. Temporary Government Service (Termination of Service) Rules, 1975. Relevant paragraph 14 of ***Rakesh Kumar*** (Supra) is pouted below:-

"14. The decision in the case of Ashok Kumar Misra (supra), pointed out that where the rule empower the

authority to extent a probation beyond the prescribed period in such case if there is no confirmation after the initial period of probation in the absence of any express provision or order confirmation, the continuation of an employee would mean extension of probation period and in such situation, termination after initial period of probation would mean termination of probationary service. The said decision has also relied on the decision in the case of Dhara Singh (supra). Om Prakash Maruya (supra) and M.K. Agarwal (supra). It has also realied on the decision the case of State of Gujarat v. Akhilesh Chand Bhargava, 1987 (4) SCC 482. in paragraphs 4 and 5 while dealing with those decisions, it was observed that the apex court had reiterated the same vies in all these four decision s that if under the regulations probationary period could not be extended beyond maximum period of two years then on the expiry of maximum period of probation, the services of the incumbent stands confirmed and he could not be services of the incumbent stands confirmed and he could not be treated to be on probation and be reverted to a lower post. Therefore, this decision in the case of Ashok Kumar Misra (supra), has affirmed the decisions in the case of Dharam Singh (supra), Om Prakash Maurya (supra) and M.K. Agarwal (supra). thus, the distinction that has been made in the said decision is to the extent that where there are provisions empowering the authority to extent the period of probation, in such situation, the expiry of the period of probation would not result into confirmation by implication In the present case, there being no authority to extent the period beyond two years, the said decision cannot help Mr. Rai since the decisions in the case of Dharam Singh (supra), Om

Prakash Maurya (supra). M.K. Agarwal (supra) and Akhilesh Bhargawa (supra), have been followed by this Court in the case of Dharmvir Singh Rana, while interpreting the Regulation 541 the same to be a stare decision."

In the case of ***Menka Gandhi v. Union of India, (1978) 1 Supreme Court Cases page 248***, the Apex Court held as under:-

> *"It is well established that even where there is no specific provision in a statute or rules made there under for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. This principal was laid down by this Court in State of Orissa v. Dr. (Miss) Binapani Dei n the following words:*
> *The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its Officers. Duty to act judicially would, therefore arise from the very nature of the function intended to be performed: it need not be shown to be superadded. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rules of law and importance; thereof transcends the significance of a decision in any particular case.*
> *In England, he rule was thus expressed by Byles, J. In Cooper v. Wandsworth Board of Works*
> *The laws of God and man both give the party an opportunity to make his defense, if he has any. I remember to have herd it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defense. "Adam" (says God), "where art thou? Hast thou not eaten of the tree whereof I*

commanded three that thou soundest not eat?" And the same question was put to Eve also."

As will appear from the facts of the present case, the petitioner was selected/recruited on 15th December, 1991 and the termination order was passed in the year, 1998 after a period of 7 years. The services of the petitioner should not have been terminated without affording opportunity to the petitioner as the provisions of the U.P. Temporary Government Servants (Termination of Service) Rules, 1975 will not be applicable in the case of he petitioner.

In view of the aforesaid, the orders dated 10.09.1998 and 18.02.2000 are quashed. The respondents are directed to reinstate the petitioner in service.

Accordingly, writ petition is allowed.

(Rajesh Tandon, J.)

Dated: July 13, 2005
Rathor